IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATIONS No 119, 120 and 121 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGINBHAI RAVIYABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

Mr S P Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/04/2001

ORAL (COMMON) JUDGEMENT

These three Revision Applications have been filed by the concerned petitioners challenging the judgment and order dated 9.3.2001 recorded by the learned Judicial Magistrate First Class, Dharampur in Valsad District, dismissing the applications of the concerned petitioners

above named for getting interim custody of muddamal articles. It appears that the offences were registered punishable under sections 397, 353 and with section 114 of Indian Penal Code, read with section 26 (e)(f)) of the Indian Forest Act, 1927 against the petitioners. During the course of the investigation, the Investigating Police Agency had seized three Motor Vehicles being Rajdoot Motor Cycle bearing Registration No.GJ 15-L 5592 (Cri.Rev.Application No.119/2001), Hero Honda Motor Cycle bearing Regn. No.GJ-15-L-6918 (Cri.Rev.No.120/2001), Tata-407 bearing Regn.No. GJ-5-V-383 (Criminal Rev.Appln. No.121/2001). The concerned petitioners above named had preferred appropriate applications in the aforesaid matters for the interim custody of the said vehicles. The said application was objected to by the State of Gujarat. After hearing the parties, the learned Judicial Magistrate First Class, Dharampur passed an order on 9.3.2001 dismissing the said application of these petitioners.

2. Feeling aggrieved by the said order of the trial court, the petitioners have preferred this petition before this Court under section 397 of the Code of Criminal Procedure (for short, 'the Code').

3. Notice was issued at the first instance. Rule was issued thereafter, Mr S P Dave, learned APP appeared at both the occasions for the State. I have heard the learned Advocates for the parties and have perused the papers. It appears from the record that there was some confusion as to the ultimate order to be passed in respect of the aforesaid vehicles. The learned Magistrate appears to be of the view that since the matter related to offence under the Indian Forest Act, it would not be open for him to pass any order for interim custody in respect of the vehicles in question and only the officers authorised under the Indian Forest Act could deal with this property and under that belief the learned Magistrate appears to have dismissed the said application of the present petitioners concerned and, therefore, the Revision was required to be filed. It is true that when an offence has been committed, it can be treated to be an offence which the officers competent to pass orders under the Forest Act can deal with the properties seized in accordance with the provisions made under the Indian Forest Act. However, in the present case, the facts are little different. One FIR was lodged and in connection with the investigation consequent upon the said FIR, these vehicles have been seized by the Investigating Police Officer of Dharampur. Therefore, the muddamal vehicles have been seized in accordance with the

provisions made in the Cr.P.C. for the seizure of the property in connection with an investigation by the Investigating Police Officer. It appears that the vehicles have not been seized by any officer of Forest Department in exercise of powers conferred on them by the Indian Forest Act. Therefore, when the vehicles have been seized by the Invesigating Police Officer during the course of police investigation on the strength of FIR presented to the police station, then, at present the muddamal vehicles will have to be prima facie, treated to be muddamal seized and kept in custody in accordance with the provisions of the Code and not in accordance with the Indian Forest Act. In that view of the matter, it can be said that the learned Magistrate had power to deal with the said vehicle. Mr S P Dave, learned APP arguing the matter on behalf of the State has relied upon decision of this court in 2000(3) GLR 2175 in order to argue that this being a forest offence, the orders are required to be passed by the competent Forest Officers in accordance with the provisions made in the Indian Forest Act. Now it is to be considered that in the present case, the vehicles have not been seized and attached under the Indian Forest Act. The vehicles have not been seized by any officer under the Indian Forest Act. The vehicles have been seized by a Police Investigating Officer in connection with a FIR filed before the Dharampur Police Station at Dharampur being C.R. No.29/2001 on 4.3.2001 and, therefore, at present these vehicles are required to be treated as muddamal articles seized in accordance with the provisions under the Cr.P.C. The difficulty which may arise would be that if the muddamal vehicles are not treated to be muddamal articles seized under the Code at present and if it is treated to be a matter of muddamal seized under the Indian Forest Act, then naturally, the learned Magistrate could not have dealt with the same but at the same time, since the Forest Officers are not having any matter with them at present, it would not be open to those officers to deal with these properties. Same way, the petitioners would also not be in a position to file appropriate matter even before the learned Sessions Judge for getting appropriate orders in respect of the said property. The learned Sessions Judge would get jurisdiction of entertaining the appeal under the provisions of the Indian Forest Act, when some orders have been passed by the Forest Officers in respect of the vehicles in question. That officer will be able to pass orders only when the vehicles are under his control or custody. So one the one hand the vehicles are under the control and custody of the Forest Officers and therefore, the Forest Officers may not be in a position to deal with the same. On the other hand, the petitioners would not

be in a position to approach the Forest Officers for the release of the vehicle since the forest department is not in possession of the vehicles in question. So there would be some ambiguity and confusion with respect to the interim order to be passed with respect to these vehicles in order to overcome this confusing situation. In that view of the matter, with a view to do substantial justice, it would be appropriate to allow this petition and direct the Investigating Police Officer to release the vehicles concerned in favour of the petitioners concerned. At the same time, some conditions may be required to be attached and one of the conditions may be that the Forest Officers competent to deal with the subject properties may also be at liberty to apply for the custody of the vehicles and if such applications are made, then, the learned Magistrate will be competent to pass appropriate orders on such applications by such officers. Since the order placing the vehicles in custody of the petitioners is interim order, it will be subject to modification as and when it is so required. In above view of the matter, these petitions are allowed. The orders passed by the learned Judicial Magistrate First Class, Dharampur dated 9.3.2001, impugned in these revisions are quashed and set aside. The vehicles in question shall be returned to the petitioners concerned by way of interim arrangement and till the final disposal of the aforesaid criminal case on following conditions:

(1) The petitioners concerned shall furnish surety and personal recognition on the strength of the amount being value of the vehicles concerned to the satisfaction of the learned Magistrate;

(2) The appropriate competent officer of the Forest department shall be at liberty to make applications for the custody of the said vehicles to deal with them in accordance with the provisions made under the Indian Forest Act;

(3) If such an application is made, then in that event, the learned Magistrate shall pass appropriate order on merit after hearing the parties;

(4) In case the learned Magistrate passes an order for handing over the vehicles to the officers of the Forest Department, the petitioners concerned shall produce the said vehicle before the learned Magistrate for being handed over to the said officer of the Forest Department;

(5) In case the vehicles are accordingly handed over to the concerned officer of the Forest Department, then the petitioners will be at liberty to make appropriate application before the appropriate authority for appropriate order in respect of the custody of the said vehicles.

(6) In the mean time, so long as the petitioners remain in possession of these vehicles, they shall keep the vehicles in order and shall not transfer or alienate the title or possession of the said vehicle till final decision of the aforesaid criminal case or till the final disposal of the matter before the Forest Officers. The petitioners shall also not use the aforesaid vehicles entrusted to them for any illegal purpose and shall not allow the vehicle to be used for the said purpose pending hearing and disposal of the aforesaid criminal case. The petitioners shall produce the aforesaid vehicles as and when so required by the Investigating Officer or by the court concerned.

Rule is made absolute accordingly. Direct Service is permitted.

25.4.2001
msp